IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10524 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SATISH @ MUNNO CHANDUBHAI DHODIYA PATEL

Versus

STATE OF GUJARAT THRO DY.SECERTARY,HOME DEPARTMENT

Appearance:

1. Special Civil Application No. 10524 of 2004

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MR HM PRACHCHHAK AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 18/01/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226

of the Constitution of India has been filed by the petitioner challenging his detention in pursuance of the order passed against him by District Magistrate, Navsari, on 30th of June 2004, in exercise of powers conferred upon him under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The petitioner is in detention as bootlegger from 18th of July, 2004 in pursuance of the above order.

2. The grounds of detention placed on record reveal that two crimes came to be registered against the petitioner before Ganadevi Police Station, under Sections 66-(1)B, 81 and 116(2) of the Bombay Prohibition Act, on 2nd of March, 2004 and 25th of April, 2004, wherein it is alleged that the petitioner was found in possession of foreign liquor. The detaining authority exhaustively examined the investigation papers of both the above registered crimes against the petitioner and came to the conclusion that the petitioner was dealing in storing, selling and transporting foreign liquor knowing fully well that the consumption of liquor is injurious to the public health. As per the detaining authority, the petitioner, on account of the above material before him, was a bootlegger and his antisocial activity was required to be prevented forthwith. The detaining authority reached to the subjective satisfaction that the illegal activities of the petitioner were prejudicial to the maintenance of public order and adversely affecting the public health. The detaining authority, therefore, passed the order of detention of the petitioner which is under challenge in this petition.

4. Learned Advocate Mr. M.R.Prajapati for the petitioner and learned AGP Mr. HR Prachchhak for the respondents were heard at length. The affidavit-in-reply filed by the detaining authority as placed on record by learned AGP is also taken into consideration.

5. Out of various grounds urged on behalf of the petitioner and opposed and controverted by learned AGP, it appears that this petition can be examined and disposed of only on the issue that whether there was any material placed before the detaining authority to come to the conclusion that by the activity of the petitioner the public order was disturbed and public health was adversely affected. The facts of the present case are squarely covered by a decision of the Division Bench of this Court, in the matter of ASHOKBHAI JIVRAJ @ JIVABHAI SOLANKI vs. POLICE COMMISSIONER, SURAT and Ors. as reported in 2000 (1) GLH 393, wherein the Division Bench of this Court after considering the decision of the Apex

Court came to the conclusion that merely filing of criminal case under the Bombay Prohibition Act against the detenu would not by itself lead to an interference that his activities were prejudicial to the maintenance of public order and adversely affecting to the public health. The investigating papers placed along with the grounds of detention nowhere disclosed that the activities of the petitioner was such as to be prejudicial to the maintenance of public order or adversely affecting to public health. There is no other material which was placed before the detaining authority to come to a conclusion in respect of maintenance of public order except investigating papers in two crimes registered against the petitioner. A line has to be drawn between "breach of public order " and "breach of law and order". The registration of cases under the Bombay Prohibition Act against the petitioner, at the most, may be the breach of law and order, for which he can be tried and punished, if he is found guilty, but the facts constituting crimes against the petitioner itself cannot be construed to be prejudicial to the maintenance of public order. There must be some credible material before the detaining authority to come to the conclusion that the activities of the petitioner was affecting the public order. In the present case, as aforesaid, there is no material indicating that, by the activities of the petitioner, maintenance of public order was disturbed or public health health was adversely affected. In total absence of credible material before the detaining authority, the subjective satisfaction reached by the detaining authority cannot be said to be legal, valid and in accordance with law, so far as it relates to the breach of public order. In this view of the matter, the order under challenge is required to be quashed and set aside.

7. In the result the petition is allowed. The order passed by District Magistrate, Navsari, on 30th of June, 2004, against the petitioner in exercise of powers under Section 3(2) of the PASA Act is hereby quashed and set aside. The petitioner - Satish @ Munno Chandubhai Dhodiya Patel is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute. DS permitted.

(J.R. Vora, J.)

p.n.nair